YAP CHONG LAN & ORS.

v.

THE GOVERNMENT OF THE STATE OF NEGERI SEMBILAN & ORS.

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[CIVIL SUIT NO. 77 OF 1983]
25 FEBRUARY 1984

LAND LAW: *Alienation - Whether null and void - Reserved land - Whether could be alienated - Whether revocation of reservation necessary - Whether direction to revoke mandatory - Equitable estoppel - Whether applicable - Whether binding on third defendant - Notice - Remedy - Whether continued possession appropriate.*

CIVIL PROCEDURE: *Preliminary objection - Whether 1st defendant a proper and necessary party - Declarations sought against it - Effect.*

The plaintiffs were in occupation of four pieces of land which had been gazetted in 1927 together with a fifth piece of land, as a vegetable garden reserve, pursuant to s. 9 of the former Land Enactment 1911. The reservation of the fifth piece of land was revoked in 1951 and 1952. The five pieces of land were alienated by the 1st and 2nd defendants to the 3rd defendant. The plaintiffs sued the defendants. They sought declaration that the alienation of the four pieces of land was null and void on the ground that the reservation of the land had not been revoked. They also sought a declaration that they be allowed to remain on the land. The 1st defendant raised a preliminary objection. It claimed that it should not have been sued.

Held:

A. Preliminary objection

The preliminary objection must be dismissed. Because of the various declarations sought against it, the 1st defendant was proper and necessary party and ought to be heard, for the purpose of enabling the Court to complete adjudication on all the issues arising.

B. Alienation of Reserved Land

[1] *Ex facie,* the contention that the alienation of the four pieces of land was a nullity as being in contravention of s. 62(4) of the National Land Code (the Code) was well-founded. Section 64(2) of the Code regarding revocation of reserved land had not been complied with.

[2] However, in the circumstances of the case the non-compliance of s. 64(2) did not invalidate the alienation of the land in question. Section 64(2) was a mere directory requirement, that it was a mere formality. The question whether a provision was imperative or only directory depends on a review of the subject matter of the case, the importance of that provision and the relation of that provision to the general object intended to be secured by the Act.

C. Occupation of Land by plaintiffs

[1] The plaintiffs' occupation of the land was on a permanent basis. An expectation had been created by the 1st defendant that the plaintiffs would be granted a lease for 99 years over the land or that they would be allowed to stay there on a permanent basis. The plaintiffs had moved to the place with the 1st defendant's knowledge and active encouragement and had incurred expenditure on the land allotted to them with its knowledge and consent.

[2] The submission that principles of equity did not apply at all to land was far too sweeping and general and ignored certain binding local authorities. Principles of equity are applied or based on grounds of good conscience, for doing justice between parties when circumstances justify or invite their application, and equity acts in *personam* by diverse ways such as orders of specific performance and injunction.

[3] The equity which the facts and circumstances had given rise to against the 1st and 2nd defendants was binding on the 3rd defendants too. It was clear that the 3rd defendant had notice actual knowledge of the circumstances under which the plaintiffs had moved to the land in question and built their houses there. Any purchaser who took with notice is bound by any equity binding the land.

[4] However, the equity that had arisen in favour of the plaintiffs could be satisfied with the payment of compensation to each of the plaintiffs and by the expense of the demolition of the houses being met by the 3rd defendant. The facts of the case militate against allowing the plaintiffs to remain on the land permanently, or the granting of a sub-lease for 30 years.

[Orders made accordingly.]

Cases referred to:

Howard v. Bodington [1877] 2 PD 203
Pow Hing & Anor. v. Registrar and Titles, Malacca [1981] 1 MLJ 155
London Clydeside Estate Ltd. v. Aberdeen District Council Anor. [1980] 1 WLR 182
Kulasingam v. Commissioner of Lands, Federal Territory [1982] 1 MLJ 204
Ramsden v. Dyson [1866] LR 1 HL 129
Plimmer v. Mayor etc, of Wellington Corporation [1884] 9 AC 699
Yong Tong Hong v. Siew Soon Wah & Ors. [1971] 2 MLJ 105
Paruvathy v. Krishnan [1983] 2 MLJ 121
Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corporation Berhad [1982] CLJ (Rep) 244
Inwards & Ors. v. Baker [1965] 1 All ER 446

Legislation referred to:

National Land Code 1965, ss. 62(4), 63, 64(2).

For the plaintiffs - Joseph Chia En Tet (Kandiah Sivam with him)
For the 1st & 2nd defendants - Mohd. Ghazali bin Mohd. Yusoff State Legal Adviser, Negeri Sembilan
For the 3rd defendant - G. Krishnan (Chan Kim Goh with him)

JUDGMENT

Peh Swee Chin J:

At the outset of this case, learned State Legal Adviser raised a preliminary objection which I feel I ought to dispose of first of all. He argued that the 1st defendant, the State Government of Negeri Sembilan should not have been sued and that the action should have been only against the 2nd defendant, the State Commissioner of Lands and Mines, Negeri Sembilan. Learned Counsel for the plaintiffs, in reply, referred to the various declarations sought against the 1st defendant. I indicated then I would hold over my decision until the conclusion of the case. In my view, the 1st defendant, because of the various declarations sought against it, should be a proper and necessary party and ought to be heard, for the purpose of completely adjudicating on all the issues herein. I therefore dismiss the preliminary objection.

At the early part of the hearing, all Counsel, in response to a suggestion from me to try to narrow down issues of facts and law, had commendably agreed on certain issues of facts, and learned Counsel for the plaintiffs, in particular, had elected to proceed only on the two issues or two of the prayers of the statement of claim in this case.

One of the two issues, is as framed in prayer (5) in the statement of claim in the following words:

> (5) A Declaration that in any event in the allotment and alienation by the 1st and 2nd defendants to the 3rd defendant Company (made in disregard of the previous *Gazette* Notification as to the use thereof as Vegetable Garden Reserve) of all those pieces of land held under H.S. (D) 14294 for New Lot No. P.T. 2 (formerly known as Lot 3181), H.S. (D) 14295 for New Lot No. P.T. 3 (formerly known as Lot 3182), H.S. (D) 14297 for New Lot No. P.T. 5 (formerly known as Lot 3184), H.S. (D) 14298 for New Lot No. P.T. 6 (formerly known as Lot 3185) all situate in the Mukim and District of Seremban is illegal, null and void and of no effect and ought to be set aside.

It will be convenient to deal with this issue first. The 1st defendant had alienated to the 3rd defendant five pieces of land concerned in this case. They used to form part, in turn, of a larger piece of land, the latter having been earlier gazetted as a vegetable garden reserve, *vide gazette* notification No. 3700 of 1927 (AB1) pursuant to s. 9 of the former Land Enactment, 1911. There was, before the said alienation to the 3rd defendant, partial revocation of portions of such vegetable garden reserve by virtue of *gazette* notification Nos. 632 of 1951 (AB2) and 731 of 1952 (AB3) respectively. Thus as at the time of hearing, only four of the said five pieces of land alienated contained portions of such vegetable garden reserve.

Learned Counsel for the plaintiffs argued that the alienation of the said four pieces of land was null and void, as being contrary to s. 62(4) of the National Land Code (the Code). Now s. 62(1) says that any State land may be by a notification in the *Gazette* reserved for any public purpose, and s. 62(2) and (3) deal with the contents and publication of such reserved land. Section 62(4) sets out as follows:

> Without prejudice to the provisions of any other written law for the time being in force, reserved land shall not be-
>
> (a) disposed of by the State Authority except to the extent permitted by, and in accordance with the provisions of, s. 63 and Chapters 2 and 3 of this Part, or
>
> (b) used for any purpose other than that for which it is reserved except in pursuance of a disposition made by virtue of any of those provisions.

Section 63, referred to in s. 62(4), provides for grant of lease for a term not exceeding 21 years to an officer in control of such reserved land or to other person having first obtained approval from such officer. The 3rd defendant, here, has been a private company set up to carry on the business of a housing developer. "Chapters 2 and 3 of this Part" referred to in s. 62(4), deal with the issue of temporary occupation of licence of such reserved land and the issue of permit to remove rocks etc. They do not apply to our instant case. It is pertinent to point out that State land is defined in the interpretation section, i.e., s. 5 as all land in the state other than alienated land, mining land, reserved land etc.

Thus, Counsel's contention that the alienation of four pieces of land was in contravention of s. 62(4) of the Code and was therefore a nullity, appears to be well-founded *ex facie*.

The arguments of learned Counsel for the defendants could be summarised as follows:

(1) The present title of the 3rd defendant, as registered owner, was indefeasible.

(2) Only one plaintiff viz. the 3rd plaintiff, out of the 13 plaintiffs in this case had his house on such land forming the vegetable garden reserve, the rest of the plaintiffs had therefore no cause of action in challenging the said alienation.

(3) The 3rd plaintiff was an unlawful occupier himself, not having a lease or temporary occupation licence.

(4) The status of the reserved land was, by implication, changed to that of building land when it was alienated as such to the 3rd defendant.

(5) The revocation of the rest of the unrevoked vegetable garden reserve would be a mere formality in the circumstances of this case.

Of the points summarised above, in my view, the most substantial point appears to be para. (5), viz. that the revocation of the rest of the unrevoked vegetable garden reserve was mere formality in the circumstances of this case. I pause here to make an observation. Even assuming without deciding that the contention that the 3rd plaintiff alone has the *locus standi* to sue for the declaration of the nullity of the said alienation, is right, as contended by the defence, the right to pursue such a declaration in this action would not be in any way impaired thereby. I revert to s. 64(1) of the Code. Section 64(1) makes it clear that any reservation of land can be revoked and s. 64(2) provides that before such revocation, notice of such proposed revocation shall be published in the *Gazette* with particulars of an enquiry to be held by the Commissioner of Lands and Mines (2nd defendant) and that the State Authority may revoke any reservation of land after considering a report from the 2nd defendant, *inter alia*, about the nature of any objections received by him at the enquiry. It is obvious that s. 64(2) had not been complied with, i.e. in not revoking completely the said vegetable reserve before the alienation of the land to the 3rd defendant. Was compliance with s. 64(2) a mere formality in the sense that it would not invalidate the said alienation? In other words, was it a mandatory provision so that its strict compliance would be required or was it on the other hand, a mere directory provision? We would have to prove the matter further.

DW1, the Deputy Commissioner of Lands and Mines, in his evidence said to the effect, that, G.N. 3700 (AB1) was peculiar because it did not specify who was in control or in charge of the said vegetable garden reserve. This was the first time he had come across such a peculiarity in his 30 years' experience in land administration. Thus, if land was reserved for **'**JKR**'**, the *gazette* notification would name the Pengarah, Jabatan Kerja Raya, as the officer in charge of the reserve, from whom approval would be necessary for its revocation. He stated categorically that since nobody was mentioned in G.N. 3700 (AB1), the State Authority which reserved it was the "person" in charge, as the State Authority was the owner of the vegetable garden reserve. When it was proposed to revoke such reserved land, and to alienate it as in this case both proposals were made to State Executive Council at the same time. He said further to the effect, that the vegetable garden reserve was not used for the purpose for which it was reserved, thus it was apparent to the Court that the reserve land herein was never used as a vegetable garden reserve. It is relevant to point out at this stage that the plaintiffs all described their lots situated in the land alienated to the 3rd defendant as overgrown with undergrowth when first seen. DW1 further said that there were strangers on such reserved land and nobody's rights were affected for not revoking the reservation which it would be no problem at all to carry out. He was on the verge of degazetting the reserve when he was told of this pending court action. It was therefore not done, and he said at one stage, that it was a formality.

It is beyond argument that s. 64(2) was not complied with, and the vegetable garden reserve in the case was never revoked before the alienation of the land in question to the 3rd defendant. Did non-compliance with s. 64(2) make the said alienation void? It would be so if s. 64(2) was a mandatory provision or requirement, and it would be otherwise if it was a mere directory provision or requirement. The following passage from the judgment in *Howard v. Bodington* [1877] 2 PD 203, 210 and 211 which was cited and adopted with approval by the Federal Court in *Pow Hing & Anor. v. Registrar and Titles, Malacca* [1981] 1 MLJ 155 is very illuminating and is in the following words:

> I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon review of the case in that aspect decide whether the matter is what is called imperative or only directory.

Lord Hailsham of St. Marylebone LC, in *London Clydeside Estate Ltd. v. Aberdeen District Council Anor.* [1980] 1 WLR 182, 189, when speaking of very much the same things, and in regard to a mere directory requirement, said:

> ... At the other end of the spectrum the defect in procedure may be so nugatory or trivial that the authority can safely proceed without remedial action, confident that, if the subject is so misguided as to rely on the fault, the Courts will decline to listen to his complaint.

The subject matter, in connection with which the applicability of s. 64(2) is being considered, was unchallenged evidence, the vegetable garden reserve; and that it was never used as such or for the purpose for which it was reserved; it was uninhabited except for the plaintiffs who moved in there later so that the failure of the revocation of the reserve to revert it to State land did not affect anybody, (except the plaintiffs whose rights to remain thereon will be dealt with later), especially when nobody in G.N. 3700 (AB1), was appointed or named as the officer in charge of the reserve land. The importance of s. 64(2) that has been disregarded cannot be considered by itself in a vacuum. The circumstances just set out above would make the compliance in this case of s. 64(2) of the Code of no practical importance or a trivial matter. The general object of s. 64(2) is, in my view, to give an opportunity to be heard to those whose interests are affected in any way on account of the revocation of the reserve. It would seem that under s. 64(2), even if a person's rights are affected or objections are raised in the enquiry before the 2nd defendant, the State Authority has a discretion to override such objections and to proceed to revoke the reserve after considering the 2nd defendant's report. In *Kulasingam v. Commissioner of Lands, Federal Territory* [1982] 1 MLJ 204, the Federal Court held that s. 9(1)(b) of the Land Acquisition Act 1960 which was infringed was held not to have invalidated the acquisition proceedings thereby and that s. 9(1)(b) of the Land Acquisition Act 1960 was not mandatory though it was for the purpose of informing other persons of the acquisition by making a note of the intended acquisition on the register document of title.

I therefore hold that a failure to revoke the vegetable garden reserve or the non-compliance of s. 64(2) did not invalidate the alienation of the land in question to the 3rd defendant for s. 64(2) in the circumstances of this case was a directory requirement in other words a mere formality. It would therefore be no longer necessary to deal with other contentions of the learned Counsel for the defendants as summarised above.

The second and last issue raised by the plaintiffs was prayer (2) of the statement of claim in these words:

(2) A Declaration that the plaintiffs had at the request consent and knowledge of the 1st and 2nd defendants expended money in construction of the buildings on the respective plots allocated to the plaintiffs on the said lands under an expectation created or encouraged by the 1st and 2nd defendants that they will be able to remain on the said lands.

It will be now necessary to revert to the facts or evidence in this case, first, both the agreed facts and undisputed evidence. In the beginning, all the plaintiffs were living in houses built by them on a piece of land in Rahang Kecil, Seremban, paying ground rent to the landlord of the land. They were then informed in or about April 1972 by their landlord that the land on which their houses stood, was being compulsorily acquired by the 1st defendant. Some of the plaintiffs, together with some others, sent an appeal letter to the District Officer, Seremban, i.e., (AB18 or p. 18 of the agreed bundle of documents marked as AB). In AB18, they asked for time to vacate from the land and either for low-cost houses or State land in a "New Village" for building afresh their houses. AB18 did not apparently fall on deaf ears, and the Pemungut Hasil Tanah (PHT), Seremban, by notice dated 22 June 1972 (AB13) and other notices similar to such notice, called upon each of the plaintiffs to attend an enquiry to be held on 29 June 1972 at the Land Office, Seremban in connection with any claim for compensation on account of such acquisition of the land. The plaintiffs appeared. All the plaintiffs were offered compensation of various amounts, which were accepted and were all below RM3,000 per house. The plaintiffs then received a same copy each of the letter dated 24 June 1972, (AB20), asking them to call at the Land Office for an interview with PHT, Seremban and to bring with them personal documents like birth certificates etc and particulars like income etc, on 30 June 1972 for the purpose of filling up application form. The heading of this letter before the following words:

Temuduga Setingan2 yang terlibat di Jalan Lemon., Jalan Wise, Rahang Kecil dan Padang Golf Ampangan, Seremban.

I pause here to observe that the application forms turned out to be application forms for State land. At that time, the heading would appear to suggest that the plaintiffs were regarded as squatters, (setingan2) and that the 1st defendant had a scheme to resettle or move all such squatters to another place. The plaintiffs then received a same copy of each of the letter (AB21) calling on them to call at the same Land Office for the purpose of drawing of lots on 27 July 1972 for their respective building lots in Ulu Temiang. The heading of this letter (AB21) bore the following illuminating words:

Chabut Undi Setingan2 yang terlibat di Jalan Rahang Yang bersetuju pindah ka-Temiang.

It is quite clear that the plaintiffs were being moved to Temiang, i.e, Ulu Temiang in fact, and the heading appears to suggest that Ulu Temiang was a place offered by the 1st defendant and the plaintiffs had agreed. All plaintiffs got their specific building lots of land to build their houses on in Ulu Temiang, an alternative site provided by the **PHT**, Seremban, i.e., the servant or agent of the 1st defendant. On 30 June 1972 and 27 July 1972, the two dates described above, the plaintiffs appeared before the Land Committee comprising of PHT, Seremban and at least two "ExCo' members of the State Government, i.e., 1st defendant. A State "ExCo" carries out its functions just like the Federal Cabinet of the Federal Government. The presence of the two "ExCo" members was never disputed by the defendants. The State "ExCo", Executive Council, to give its full name, one must not forget, is in practical terms, the State Authority under the Code and it can alienate land to anybody it wishes. The application forms that were filled up were, as I said, application for state land. The plaintiffs were brought to Ulu Temiang where an assistant PHT and a settlement officer identified their respective lots of the plaintiffs to the plaintiffs and the lots were demarcated by wooden

pegs. The plaintiffs were allowed by PHT to build the houses on their respective lots and the plaintiffs further obtained their water supply from "JKR" through the help of the PHT who duly gave his support (AB37) to such water supply. In supporting the application for water supply to the plaintiffs the PHT advised JKR's senior engineer on a cyclostyled letter that the plaintiffs' houses were not illegal houses; that the houses were built on kampong/ agricultural land and could be given water, and that the plaintiffs were moved from Rahang Kecil because of acquisition proceedings (highway), but only one meter would be allowed. The plaintiffs each received a same copy of the letter (AB24) calling on them to call at the Land Office on 23 January 1975 for the purpose of giving information to the PHT regarding the houses occupied by them.

What was however, seriously and hotly disputed was whether the plaintiffs were given permission to stay at Ulu Temiang on a temporary basis as alleged by the defendants, or whether they were promised they could stay there permanently or would be given each a lease of 99 years of the State land allotted to them as alleged by the plaintiffs. The plaintiffs alleged that at the interviews before the PHT and at two of such interviews before the Land Committee which consisted of two 'ExCo' members, they were promised leases of 99 years or allowed to live there permanently. The then PHT who interviewed the plaintiffs viz. DW2, denied ever having said they would be allowed to stay there permanently in Ulu Temiang or that they would be given such leases. Between the plaintiff's evidence on the one hand, and DW2's evidence on the other, I accept the evidence of the plaintiffs who impressed me, on this score. My acceptance of the plaintiffs' evidence is not unduly influenced by the fact that same story was repeated 13 times by the 13 plaintiffs but by their demeanour in the witness box, so naturally positive and looking very hurt without a show of undue self-righteousness. I observed and found DW2 to be very hesitant at times, appearing with a trace of reluctance, to exculpate himself or his previous principal or master or his then superior officers. At times he appeared to be compunctious in having to give evidence against the plaintiffs, especially when cross-examined about the plaintiffs being allowed to stay at Ulu Temiang on a permanent basis or that they would be given leases of 99 years. Such slowness in answering these questions would appear to contrast sharply with the same man who in a quick succession issued notices and arranged for those interviews for drawing lots etc. The impression as to the demeanour of DW2, described above would have to be tested against the rest of the evidence of DW2, especially in regard to the documentary evidence of (AB27) signed by him calling for particulars from the plaintiffs; interview with him and for filling up an application form for State Land. In this connection (A26) was apparently signed by DW2, comparing the signature thereon with signature on (AB27). There can be no doubt that he played a very important and commendable role in efficiently arranging for the plaintiffs to be interviewed before the Land Committee and himself; paid compensation; moved to Ulu Temiang; allowed to build those houses and stay there; provided with water supply; enabled to take part in the drawing of lots for the lots in Ulu Temiang. After considering the rest of his evidence, the Court's impression as to the demeanour of DW2 remains unchanged.

I therefore find that the PHT viz. DW2 did inform the plaintiffs that they would be given leases of 99 years each for the lots that were allocated to the plaintiffs at the drawing of lots; and that they would be allowed to stay there on a permanent basis.

I accept the evidence of the plaintiffs that they were similarly informed by members of the Land Committee comprising of *inter alia*, two "ExCo" members of the 1st defendant, that the plaintiffs would be given leases of 99 years each, in other words, they would be allowed

to reside in Ulu Temiang on a permanent basis, and it seems that 99 years' lease and permanent basis spoken of by the plaintiffs would appear to them to mean very much the same thing. In this, the plaintiffs were not wrong.

Now prayer (2) of the statement of claim set out above is in words or terms similar to the celebrated statement of Lord Kingsdown in *Ramsden v. Dyson* [1866] LR 1 HL 129, in the House of Lords. That venerated statement was relied on and adopted by the Privy Council in an appeal from New Zealand, viz, *Plimmer v. Mayor etc, of Wellington Corporation* [1884] 9 AC 699. *Plimmer's* case was relied on by our Federal Court in *Yong Tong Hong v. Siew Soon Wah & Ors.* [1971] 2 MLJ 105 and the Federal Court's decision was upheld by the Privy Council later. There is a long line of cases based on this principle of equitable estoppel embodied in that statement (see e.g. our Federal Court's very recent decision in *Paruvathy v. Krishnan* [1983] 2 MLJ 121) that any argument against it as an applicable principle in our Courts cannot be countenanced.

I have no doubt that an expectation was created by the 1st defendant through its Land Committee and the PHT, Seremban from the evidence set out above, or a verbal agreement was made by the 1st defendant's agents or servants viz the PHT and the two "ExCo" members that the plaintiffs should have a lease for 99 years over the lots allocated to them in Ulu Temiang or that the plaintiffs would be allowed to stay there on a permanent basis. I further hold that the plaintiffs moved to Ulu Temiang with the 1st defendant's knowledge, and in fact, active encouragement; that on the faith of such verbal agreement or expectation, with the knowledge and consent of the 1st defendant or its servants or agents, the plaintiffs incurred expenditure on the lots allocated to them in building their houses thereon. My conclusion herein *ipso facto* throws overboard, the constant and repetitious argument about the plaintiffs being squatters. This long case was not without its moments of humour when learned Counsel for the 3rd defendant in the course of submission, observed grudgingly that the plaintiffs were "squatters" with permission to squat; a statement as remarkably incongruous as saying that a person is an invited guest but a trespasser as well. I hold further on the facts before me that the plaintiffs have been at all times licencees coupled with an equity as regards their occupation of their own houses on the land in question in Ulu Temiang.

Before I deal with another topic of my judgment, I ought to deal very briefly with the repeated submission of learned Counsel for the 3rd defendant that principles of equity did not apply at all to land, and he cited the case of *Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corporation Berhad* [1982] CLJ (Rep) 244 in support of his submission. Counsel's submission, in my view, is far too sweeping and general to be of any substance, and it further conveniently ignores such binding local authorities as the *Paruvathy case* (*supra*) and the case of *Yong Ton Hong* (*supra*). It is thus not really necessary in this case to discuss it further, though my view is that principles of equity are applied or based on grounds of good conscience for doing justice between parties when circumstances justify or invite their application and equity acts *in personam* by diverse ways such as orders of specific performance and injunction. Such principles should not be regarded or branded as impinging on, or replacing our land legislation. The relation of such principle to the Code or land legislation based on the Torrens system must, when an occasion does really arise, await a comprehensive treatment from our Federal Court. To revert to the case of *Pemungut Hasil Tanah, Kota Tinggi v. U.M.B.C.* (*supra*) and relied on by Counsel, that case is clearly distinguishable from our instant case, as that case was concerned with the applicability of the equitable relief against forfeiture of alienated land with such forfeiture being at the instance of the State Authority. Commenting on the authorities canvassed before the Federal Court,

Abdoolcader J (as he then was) who delivered the judgment of the Court, made a very interesting observation when he said at p. 253 that such authorities, to quote, "deal with personal covenants by agreement and bargain relating to leases, tenancies, mortgages and penalties. The present proceedings, however, involve forfeiture of alienated land under statutory provisions ..." The passage appears to suggest clearly that as far as personal covenants of leases etc. are concerned, the equitable relief against forfeiture may still be available.

The next question is, is the equity which the facts and circumstances have given rise to against the 1st and 2nd defendants, binding on the 3rd defendant? Counsel for the 3rd defendant plainly submitted in the negative. In *Inwards & Ors. v. Baker* [1965] 1 All ER 446 which also adopted the rationale in *Plimmer case* (*supra*), a son who was encouraged by his father to build a bungalow to live in on the father's land was sued for possession by the trustees of the father's will. The claim for possession was dismissed by Lord Denning in the Court of Appeal with whom the other two members of the Court concurred, in reversing the decision of the lower Court. Counsel for the trustees suggested before the Court of Appeal that a hypothetical purchaser of land from the father could have got the said son out of the land. Lord Denning said any such purchaser who took with notice would be clearly bound by the equity there. Thus in the instant case, the question then is whether the 3rd defendant accepted the alienation of the land in question from the 1st defendant with notice of the circumstances as revealed by the evidence in this case. It was argued on behalf of the 3rd defendant that the 3rd defendant had no such notice.

Once again it will be necessary to refer to the relevant evidence to resolve this question of fact as regards such notice. Para 1 (v) of the letter of approval of application for the land in question from PHT, Seremban to the 3rd defendant (AB9B) stated, as a condition of such approval, that the 3rd defendant would be required to pay compensation of RM2,000 to each of the "penghuni tiap-tiap rumah" on the land in question, in other words, that compensation was to be paid to the occupier of each house on the land. The avoidance of the use of the word "setinggan-setinggan" or squatters in the letter of approval, and the requirement of payment of compensation to such occupiers would be hardly consonant with the status of squatters, a label which the defendants tried in Court to put on the plaintiffs unceasingly. This, of course, may not be sufficient by itself to affix actual knowledge or notice on the 3rd defendant. Again in the affidavit of DW3, managing director of the 3rd defendant, made on 18 March 1983, he deposed that the proposed housing scheme at Ulu Temiang was a joint venture "with Yayasan Negeri Sembilan". The Court was told from the Bar at the hearing of the application for an interim injunction that the Yayasan Negeri Sembilan was a wholly-owned statutory body of the 1st defendant and that the Yayasan owned 100,000 out of the 400,000-shares in the issued capital of the 3rd defendant. The 1st defendant and the 3rd defendant were jointly concerned in the proposed housing scheme at Ulu Temiang. The 3rd defendant should know as much as the 1st defendant about the plaintiffs and the land in question. Again according to DW3, the managing director of the 3rd defendant, in cross-examination, he said to the effect that they checked up with the Land Office, (Seremban) before they applied for the land, through their consultants. Before the alienation of the land, he said he saw the land and met people there who seemed to agree that they had to move out. Before they made the application for the land, they did make a survey as to whether they were there with the approval of the 1st defendant. He stated he would still regard the plaintiffs as illegal squatters if the plaintiffs moved to Ulu Temiang and built houses there with the approval of 1st defendant, because plaintiffs had no titles, or temporary occupation licences or did not pay rent to the 1st defendant.

From the evidence set out above, I find that the 3rd defendant had notice or actual knowledge of the circumstances under which the plaintiffs moved to Ulu Temiang and built their houses there. The equity such circumstances gave rise to against the 1st and 2nd defendants would therefore be binding on the 3rd defendant.

In *Inwards & Ors. v. Baker* (*supra*), upon such an equity arising, Lord Denning said it was for the Court to say in which way the equity could be satisfied.

To decide how the equity in the instant case ought to be satisfied, from the evidence of DW3, one could not help being impressed by the new township that was proposed to be created at Ulu Temiang. To develop any part of Seremban town in an orderly, efficient and modern way is something all would applaud. This proposal bears the indicia or rather dynamic and progressive approach or policy adopted possibly on a change of the helm of the State Government, the 1st defendant, without paying sufficient regard to the prior commitment to the plaintiffs thus leaving the plaintiffs out in the cold, in the process. Again the plaintiffs would appear to form the remaining minority from the original dwellers on Ulu Temiang, for 446 families out of 564 families had decided to leave, they having come to terms with the 3rd defendant. All these factors militate against allowing the plaintiffs to remain on the land permanently or granting them with a sub-lease for 30 years as was done in the case of *Yong Tong Hong* (*supra*).

I also take into consideration the fact that the 3rd defendant, having regard to commercial value of the land, (which can be gleaned from the fact in turn that three of the five titles issued to the 3rd defendant by the 1st defendant were charged to some financial institution for raising a loan of RM5 million), stands to gain a great deal from the said alienation without of course losing sight of the fact of the 1st defendant owning ¼ of the issued capital of the 3rd defendant.

I therefore conclude that the appropriate way for the equity that has arisen in favour of the plaintiffs to be satisfied is to give judgment for the plaintiffs in terms as follows:

(1) The 3rd defendant do forthwith pay RM25,000.00 to each of the plaintiffs herein as compensation.

(2) the plaintiffs or each of them, on payment or satisfaction of the said sum of RM25,000.00, do quit and vacate from the land in question within two months thereafter;

(3) in so vacating, the plaintiffs be allowed to demolish their respective houses at the expense of the 3rd defendant and take away the resulting building materials and all their belongings, within the said two months, failing which the 3rd defendant be entitled to demolish the same at the cost of the 3rd defendant; and

(4) the 1st and 2nd defendants are to pay one-half of the costs to be taxed, and the other half to be borne by the 3rd defendant, and that there be liberty to apply generally.

Also found at [1984] 1 CLJ 392